

2018 PUBLIC DEFENDERS CONFERENCE

ETHICS: STATISTICS AND CASE LAW UPDATE

SEPTEMBER 2018



INTRODUCTION

The most pressing issues for practitioners are those that appear to recur annually. These are diligence, communication, and issues involving professionalism. With the advent and rise of social media, however, certain issues appear to be on the rise, most notably an erosion of civility and violation of rules governing client confidentiality.

Discovery abuse appears also on the rise, as does the continued abuse of the subpoena power. Financial issues also remain pervasive, from trust account problems to the failure to pay court reporters or other third parties. Conflicts of interest also continue to occur.

Finally, lawyers continue to find themselves in trouble for failing to cooperate with the Commission on Lawyer Conduct or the Office of Disciplinary Counsel. Cooperation is not optional -- several rules mandate such. And a failure to cooperate can aggravate greatly an otherwise manageable or benign situation.

The materials provide the latest statistics on disciplinary cases from July 1, 2017 through June 30, 2018. The materials also contain disciplinary decisions the Supreme Court filed from July 2017 through August 2018. These decisions provide a snapshot of the issues facing practitioners every day, including those who appear in family court.

In closing, the rules of professional conduct are not intended to punish lawyers or judges but, rather, to protect the public. Be conscious of your conduct, but within and outside the confines of a case. As a lawyer you represent the legal profession, and the license the Supreme Court granted to you is a privilege, not a right. Guard it carefully.

And apply the Golden Rule to all of your dealings.

STATISTICS

ANNUAL REPORT OF LAWYER DISCIPLINE IN SOUTH CAROLINA 2017-2018

COMPLAINTS PENDING & RECEIVED

Complaints Pending June 30, 2017	896	
Complaints Received July 1, 2017 - June 30, 2018	1492	
Total Complaints Pending and Received		<u>2388</u>

DISPOSITION OF COMPLAINTS

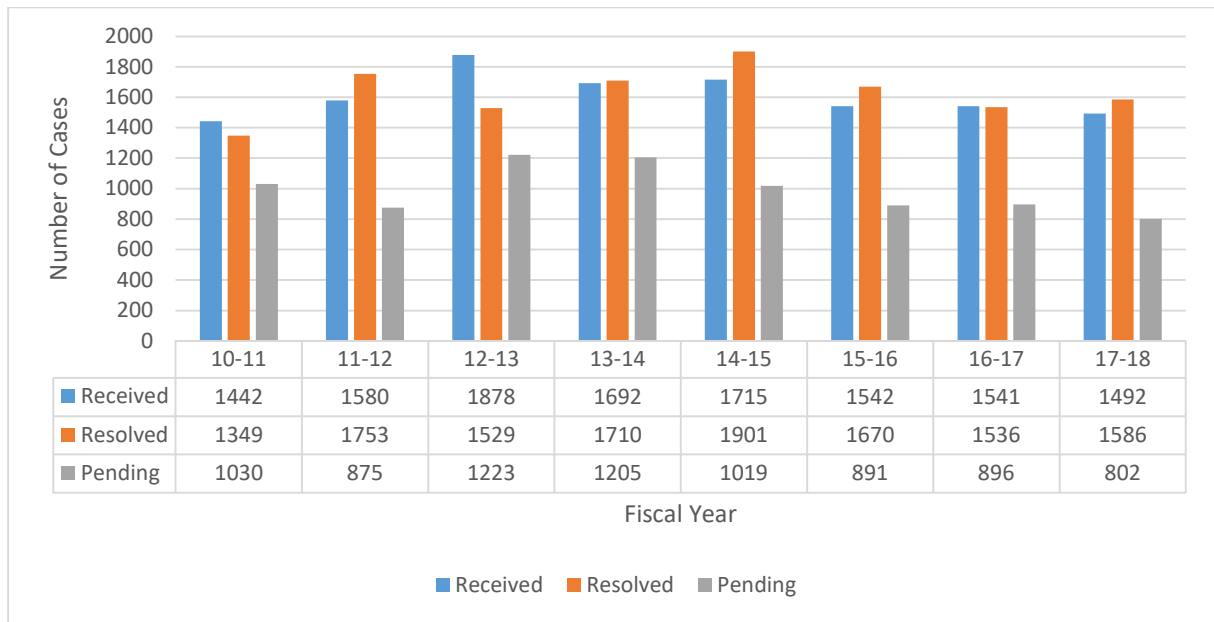
Dismissed

By Disciplinary Counsel after initial review	413	
By Disciplinary Counsel after investigation	951	
By Investigative Panel	71	
By Supreme Court	<u>0</u>	
Total Dismissed		<u>1435</u>

Not Dismissed

Referred to Other Agency	1	
Closed But Not Dismissed	0	
Closed Due to Death of Lawyer	8	
Deferred Discipline Agreement	1	
Letter of Caution	92	
Admonition	9	
Public Reprimand	14	
Suspension	15	
Disbarment	8	
Bar to Future Admission/Debarment (out-of-state lawyer)	3	
Permanent Resignation in Lieu of Discipline	<u>0</u>	
Total Not Dismissed		<u>151</u>

Total Complaints Resolved	<u>1586</u>
Total Complaints Pending as of June 30, 2018	<u>802</u>



Practice Type

Law firm	42.76%	Less than 1%
Solo practice	23.79%	Corporate/general counsel
Public defender	20.71%	Mediator/arbitrator/commissioner
Prosecutor	6.70%	Not practicing
Other government	1.74%	Department of Social Services
Unknown	1.41%	Law Clerk
Guardian <i>ad litem</i>	1.01%	

Sources of Complaints

		Less than 1%
Client	58.85%	Citizen
Opposing Party	19.30%	Disciplinary Counsel
Attorney	4.49%	Family/Friend of Opposing Party
Bank	4.02%	Family/Friend of Witness/Victim/Ward
Family/Friend of Client	2.68%	Family/Friend/Business Assoc. of Lawyer
Court Rptr./Med.Prov./3d Party Payee	1.74%	Judge
Self-report	1.60%	Litigant (ADR/Regulatory)
Anonymous	1.27%	Litigation Witness/Victim/Ward
		Prospective Client
		Public Official/Agency/Law Enforcement
		Receiver
		Resolution of Fee Disputes Board
		Source

Case Type

Criminal	44.84%	
Domestic	14.81%	Less than 1%
Personal Injury/Property Damage	7.17%	Social Security/Federal Benefits
Probate/Estate Planning	6.64%	Corporate/Commercial/Business
Real Estate	5.63%	Immigration
Not Client Related	3.22%	Landlord/Tenant
Debt Collection/Foreclosure	2.75%	Other Case Type
Property/Contract Dispute	2.55%	Professional Malpractice
Post Conviction Relief	2.41%	Regulatory/Zoning/Licensing
General Civil	2.08%	Tax
Workers Compensation	1.47%	Unknown
Employment	1.27%	
Homeowners Association	1.27%	
Bankruptcy	1.14%	

Alleged Misconduct

Neglect/Lack of Diligence	28.42%	
Dishonesty/Deceit/Misrepresentation	23.12%	
Inadequate Communication	18.30%	Less than 1%
Trust Account Misconduct	4.96%	Confidentiality
Lack of Competence	4.09%	Bar Admissions/Disciplinary Matter
Conflict of Interest	2.75%	Declining/Terminating Representation
Incivility	2.08%	Ex Parte Communication
Advertising Misconduct	1.81%	Failure to Pay Fee Dispute
Failure to Deliver Client File	1.74%	Other Conduct
Failure to Pay Third Party	1.68%	Real Estate Conduct
Fees	1.68%	Sexual Conduct (Noncriminal)
Scope of Representation	1.41%	

Criminal Conduct (personal)	1.34%
Other Litigation Misconduct	1.21%
Unknown	1.07%
Unauthorized Practice	1.01%

SUBSTANCE ABUSE/MENTAL HEALTH

The Office of Disciplinary Counsel began reporting annual data related to substance abuse or mental health in concluded complaints for fiscal year 2013-2014. In the 2017-2018 fiscal year, ODC disposed of 8 lawyer complaints in which substance abuse was asserted or found to be related to or to form the basis for disciplinary action (if any). During the 2017-2018 fiscal year, ODC disposed of 9 complaints in which mental health or emotional impairment resulted in an attorney being unable to fulfil his/her professional responsibilities. These 9 complaints involved 4 attorneys. Overall, these 17 complaints represent a 19.05% decrease from the report for the previous year. These issues included:

- Panic attacks, stress
- Other mental health
- Alcohol abuse
- Other substance abuse

For more information on current national statistics, trends and recommendations regarding these issues, see ABA National Task Force on Lawyer Well-Being (Aug. 2017) found at

<https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf>. See also Krill, Patrick R., et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, Jour. Of Addiction Med., Vol. 10, Issue 1, pp. 46-52 (Jan./Feb. 2016).

UNLICENSED* LAWYER COMPLAINTS

In the 2017-2018 fiscal year, ODC concluded 19 complaints against 18 unlicensed lawyers. Of the complaints concluded involving unlicensed lawyers, 42.10% resulted in some form of discipline against the lawyer. This is compared to an overall discipline rate of 9.52%. Home jurisdictions of unlicensed lawyers included:

North Carolina	4	California	1
Illinois	4	District of Columbia	1
Florida	2	Massachusetts	1
Georgia	2	Missouri	1
Kentucky	1	Utah	1

*An unlicensed lawyer is a lawyer not licensed in South Carolina, but admitted in another jurisdiction.

ATTORNEY TO ASSIST ASSIGNMENTS

Complaints Assigned to ATAs	1
Reports Filed by ATAs	1
Outstanding ATA Reports	0

COMMISSION ON LAWYER CONDUCT

COMMISSION PROCEEDINGS

Meetings of Investigative Panels	6
Formal Charges Filed	5
Formal Charges Hearings	2
Incapacity Proceedings	2
Meetings of Full Commission	0

REQUESTS FOR DISMISSAL REVIEW

Requests for Review by Complainant	113
Dismissal Affirmed by Panel	(105)
Letters of Caution Issued by Panel	0
Case Remanded for Further Investigation	<u>0</u>
Dismissal Review Pending	<u><u>8</u></u>

RECEIVER APPOINTMENTS

Pending as of June 30, 2017	11
New Appointments	+13
Appointments Terminated	<u>(11)</u>
Pending as of June 30, 2018	13

SPECIAL RECEIVER/ATP APPOINTMENTS

Serving as of June 30, 2017	2
Appointed	0
Discharged	<u>(2)</u>
Serving as of June 30, 2018	<u><u>0</u></u>

LAWYERS BEING MONITORED

New Monitor Files Opened	41*
Lawyers Currently Monitored	114

*includes 7 conditional admissions

SUPREME COURT OF SOUTH CAROLINA

DISCIPLINARY ORDERS*

Dismissal	0
Letter of Caution	0
Admonition	3
Public Reprimand	10
Definite Suspension	8
Disbarment	4
Bar to Future Admission (debarred)	2
Resignation in Lieu of Discipline	0
Transfer to Incapacity Inactive	1
Interim Suspension	5

*These figures represent the number of orders issued by the Supreme Court, not the number of complaints. Some orders conclude multiple complaints.

COMPLAINTS REFERRED TO SUPREME COURT:

Complaints resolved	42
Pending as of June 30, 2018	27

RECENT CASES

Advertising/Solicitation

Matter of Lord, 421 S.C. 394, 807 S.E.2d 696 (2017) – Lawyer sent direct mail solicitation letters to potential clients who received traffic ticket that contained multiple violations (e.g., had tagline “attorneys at law” when he is a solo; used the phone number “(844) FIXTICKET,” which is a nickname, tradename, or moniker and likely to create unjustified expectations or an implication he can achieve result by unethical means, or obtain certain results); used statements on his law firm’s website that he could not factually substantiate (that he has “unique insight into the South Carolina traffic laws that many other lawyers simply do not have”), and failed to revise his claimed online AVVO profile to conform with recent disclosure requirements. Public reprimand.

Arrest for Serious Crime

Matter of Droese, 423 S.C. 517, 815 S.E.2d 760 (2018) - Lawyer was arrested after taking possession of a substance he believed was oxycodone. He resigned that day as a part-time magistrate. The judge admitted he violated Canon 1A (a judge should maintain high standards of conduct) and Canon 2A (a judge shall respect and comply with the law and shall act at all times to promote public confidence in the integrity of the judiciary), Rule 501. Public reprimand (the most severe sanction the Court may impose after a judge resigns).

Matter of McAdams, 421 S.C. 101, 804 S.E.2d 850 (2017) – Lawyer participated in fraudulent investment scheme and was arrested for wire fraud, wire fraud conspiracy, and international money laundering. Disbarred.

Matter of Parrott, 421 S.C. 105, 804 S.E.2d 852 (2017) - Lawyer was arrested and charged with voyeurism after he used a cell phone to take a photo up a woman's skirt in a grocery store. Lawyer failed to inform the Commission on Lawyer Conduct within 15 days, but thought he did not have such a duty. Lawyer admitted his conduct reflected adversely on his honesty, trustworthiness and/or fitness as a lawyer, and that the criminal act involved moral turpitude. See Rules 1.0(o), RPC and Rule 8.3(a). 9-month suspension (not retroactive).

Matter of Farrell, 420 S.C. 512, 804 S.E.2d 267 (2017) - Lawyer was convicted in federal court in Maryland of 7 counts of money laundering, 2 counts of attempted tampering with official proceedings, and 1 count of attempted wire fraud. Disbarred.

Communication

Matter of Gorski, ___ S.C. ___, 817 S.E.2d 289 (2018) - Lawyer failed to keep clients reasonably informed regarding their cases. 12-month suspension.

Matter of Yakobi, 422 S.C. 355, 811 S.E.2d 791 (2018) - Client hired Lawyer for a domestic relations matter. Over the next two months the client attempted to reach Lawyer by telephone, email, letter and Lawyer's website, but heard nothing. The client fired him and demanded the fee be returned. The client's new lawyer also attempted to contact Lawyer without success. Lawyer stated his paralegal and the paralegal's daughter (who was the receptionist) intentionally deflected attempts at communication by the clients and the new counsel that were intended for Lawyer, including deleting emails sent directly to Lawyer. Lawyer fired those staff members. Upon receiving the Notice of Investigation from ODC, Lawyer hand-delivered a full refund check to new counsel. Lawyer admitted not initiating communication with clients to keep them reasonably informed as to the status of their cases. Public reprimand.

Confidential information revealed

Matter of Lord, 421 S.C. 394, 807 S.E.2d 696 (2017) – Lawyer disclosed client's confidential information online in response to a negative review on AVVO, and subsequently failed to remove the confidential information. Public reprimand.

Conflict of Interest

Matter of Bledsoe, 422 S.C. 325, 811 S.E.2d (2018) - Lawyer represented client in domestic relations case after client, while represented by another lawyer, lost custody at a temporary hearing. The client's spouse died before the final hearing, and the family court subsequently awarded custody to the spouse's sister and sister's husband. The client released Lawyer shortly thereafter and got a new lawyer. During the representation, however, Lawyer expressed to the client that he

was interested in a sexual relationship with her and asked her to show her breasts to him. She did so, but felt ashamed and humiliated. They did not engage in a sexual relationship. Lawyer agreed his behavior violated Rule 1.7(a)(2) (conflict of interest involving personal interest), 8.4(e) (conduct that is prejudicial to the administration of justice). Public reprimand.

Matter of Swan, 422 S.C. 328, 811 S.E.2d 777 (2018) - Lawyer represented a criminal client. Over the course of the representation, Lawyer paid the client's bond, permitted client to stay at Lawyer's home (with permission from Lawyer's wife), Lawyer's wife provided client with clothing, and Lawyer provided other assistance (from his operating account or personal funds), including obtaining a driver's license, car insurance, a new cell phone, and a job briefly in Lawyer's office. Lawyer also assisted client in signing up for inpatient drug rehabilitation. Lawyer had negotiated a plea agreement for client and thought the matter would be concluded by the time he began providing her with financial assistance. None of the funds encouraged client to pursue litigation nor did they provide Lawyer a stake in any litigation. Lawyer admitted to violating Rule 1.8, RPC (see Comment 10). Public reprimand.

Matter of Cooper, 422 S.C. 350, 811 S.E.2d 788 (2018) - Lawyer provided legal advice to her two step-daughters simultaneously, even though there was a significant risk that her representation of either woman would be materially limited by her representation of the other in violation of Rule 1.7(a), RPC. She also did not enter the names in the firm's conflicts system so that another lawyer in the firm was disqualified in an unrelated case due to Lawyer's representation of one of the step-daughters. The facts are lengthy. Public reprimand.

Matter of Rogers, 421 S.C. 292, 805 S.E.2d 763 (2017) – Lawyer was employed by general counsel at a medical center. A patient at the center had no family or friends to care for her, so Lawyer volunteered to act as her guardian and conservator. Lawyer did not disclose the possible conflicts of interest that could arise out of her appointment with the patient and did not have the patient waive those conflicts. Lawyer billed her time as conservator, which totaled \$8,687. Lawyer also hired her son, who she believed had recovered from drug abuse problems, to work on the patient's home. She permitted the son to stay in the home. Unknown to her, the son moved in, vandalized the home, forged the patient's name on the car title and sold the car, and sold some of the patient's possessions. Lawyer reported this to the police. She was also arrested, however, and charged with Failing to Report Exploitation of a Vulnerable Adult, was placed

on interim suspension, and participated in PTI. The interim suspension was lifted by the Court's decision to issue a public reprimand. Public reprimand.

Debarment

Matter of Lundgren, 421 S.C. 300, 806 S.E.2d 125 (2017) (Utah). Lawyer disbarred by State of Utah for misappropriation of client funds.

Matter of McKeever, 421 S.C. 130, 805 S.E.2d 201 (2017) (Kentucky) (UPL, improper fee arrangements, false statements before the court, attempting to intimidate a former client). Lawyer ultimately disbarred by Commonwealth of Kentucky based upon South Carolina debarment and the underlying behavior.

Diligence

Matter of Gorski, ___ S.C. ___, 817 S.E.2d 289 (2018) - Lawyer failed to act with reasonable diligence and promptness in concluding client cases. Lawyer also took nearly a decade to have three QDROs prepared. 12-month suspension.

Matter of Bledsoe, 422 S.C. 325, 811 S.E.2d (2018) - Lawyer represented a client in divorce/custody action. Judge awarded custody of one child to the client and another child to the client's spouse, and the client was ordered to pay child support monthly. Lawyer prepared a temporary order requiring the client to pay child support weekly. Although Lawyer submitted an amended temporary order to the judge correcting the error, funds were garnished from the client's payroll on four occasions for weekly payments because of the original order. The client suffered financial difficulties, including difficulty paying for rent, utilities and food. Public reprimand.

Failure to Pay Court Reporters/Medical Providers/Others

Matter of Whitlark, 422 S.C. 362, 811 S.E.2d 794 (2018) - On 7 occasions, Lawyer and his previous partner hired court reporters for depositions, and ordered transcripts. When the invoices went unpaid the court reporter sued them in magistrate's court and obtained a default judgment. Lawyer failed to pay his portion, even after receiving notice from ODC. In another matter, Lawyer represented a client in a personal injury case and agreed to protect a physician's

bill, which totaled about \$71,000. The client was successful and obtained an award of \$800,000. Lawyer tried to negotiate the doctor's bill, and discovered some charges were inflated and other were fraudulent. The doctor filed suit against the Lawyer and the client and obtained a judgment for \$9,054.81. By the time the doctor's action was resolved, Lawyer had distributed all remaining settlement funds to the client, failing to hold the disputed \$71,000 in trust pending resolution of the dispute. Lawyer admitted he violated Rule 4.4(a) (lawyer shall not use means that have no substantial purpose other than to delay or burden a third party, or use methods of obtaining evidence that violate the legal rights of such a person). 6 month suspension.

Matter of Smalls, 421 S.C. 295, 805 S.E.2d 764 (2017) – Lawyer engaged in a pattern and practice of failing to timely pay court reporters for services in violation of Rules 4.4 (respect for rights of third persons) and 8.4 (conduct that is prejudicial

Failure to Respond/Cooperate - *Treacy* Letter

Matter of Geer, 422 S.C. 415, 812 S.E.2d 731 (2018) - Lawyer had several matters against him and simply failed to respond to anything or responded late in the investigation. He also failed to update his AIS information as required by Rule 410, SCACR. Because of concerns over Lawyer's mental health, the Court appointed a lawyer to serve first as a Guardian ad Litem and then as a lawyer for Lawyer. The Court expressed sympathy for Lawyer's "substantial, well-documented mental health issues, but suspended him anyway in accord with the Court's duty to protect the public. 3-year suspension and restitution ordered.

Matter of Kern, 423 S.C. 567, 816 S.E.2d 574 (2018) - The Court sanctioned Lawyer for assisting a client in a Ponzi scheme. The Court noted throughout the opinion Lawyer's recalcitrance in his dealings with ODC. 18-month suspension.

Matter of Yacobi, 422 S.C. 355, 811 S.E.2d 791 (2018) - Lawyer failed to respond to a Notice of Investigation and received a *Treacy* letter, and failed to appear for an interview under Rule 19(c)(3), RLDE - he claimed his nonlawyer staff had not made him aware of mail or notices ODC sent to him.

Matter of Bell, 421 S.C. 520, 809 S.E.2d 54 (2018) – Lawyer responded to a notice of investigation and a request for additional information from ODC after receiving reminder letters. He also gave a false explanation for why he had defalcations in his trust account. Lawyer admitted he violated Rule 8.1(b) (lawyer in connection

with a disciplinary matter shall not fail to respond to a lawful demand for information from a disciplinary authority). 9 month suspension.

Matter of Smalls, 421 S.C. 295, 805 S.E.2d 764 (2017) – Lawyer failed to timely respond or otherwise cooperate with ODC in investigation numerous complaints regarding failing to timely pay court reporters for services. This failure to cooperate violated Rule 8.1, RPC. He also failed to comply with conditions with a previously entered consent agreement for discipline. 18-month suspension.

Matter of McAdams, 421 S.C. 101, 804 S.E.2d 850 (2017). Lawyer failed to cooperate with disciplinary investigation, failed to answer formal charges, and failed to appear at the disciplinary hearing regarding an investigation into his arrest on numerous federal criminal charges. Disbarred.

False Evidence in Court

Matter of n, ___ S.C. ___, 817 S.E.2d 288 (2018) - Lawyer represented maternal grandmother in custody dispute with another relative after mother was killed in an accident. The family court granted custody to another relative. About 2 weeks later Lawyer submitted a sworn affidavit to the court in support of grandmother's request for an emergency hearing. The affidavit was signed with grandmother's name and notarized by Lawyer. Grandmother later fired Lawyer and then informed the court that the affidavit was forged. Grandmother claimed no knowledge of the affidavit when it was filed but asserted the contents were true. Lawyer admitted she signed grandmother's name to the affidavit. Lawyer admitted she violated Rule 3.3(a)(3) (lawyer shall not knowingly offer evidence the lawyer knows to be false; Rule 3.4(b) (lawyer shall not falsify evidence); Rule 8.4(d)(it is misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); 8.4(e) (it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice); Rule 7(a)(1), RLDE (violating the RPC); and Rule 7(a)(5), RLDE (conduct tending to pollute the administration of justice or to bring the legal profession into disrepute or conduct demonstrating an unfitness to practice law is a ground for discipline). 9-month suspension.

Matter of Whitlark, 422 S.C. 362, 811 S.E.2d 794 (2018) - Lawyer represented a client in a personal injury case and agreed to protect a physician's bill, which totaled about \$71,000. The client was successful and obtained an award of \$800,000. Lawyer tried to negotiate the doctor's bill, and discovered some charges

were inflated and other were fraudulent. The doctor filed suit against the Lawyer and the client and obtained a judgment for \$9,054.81. Lawyer failed to disclose to the trial judge that he had offered material evidence and testimony at trial (in the form of the doctor's bill and testimony) that he later learned was partially false. He admitted he violated Rules 3.3(a)(1)(failing to correct false statements made to tribunal), 3.3(a)(3) (failure to take reasonable remedial measures to address false evidence) and 8.4(a). 6 month suspension.

Fee Splitting with Nonlawyers

Matter of Taylor, 421 S.C. 400, 807 S.E.2d 699 (2017) – Lawyer paid referral fees to the brother of his long-standing business partner and to a police chief for their role in referring a personal injury case to him. He admitted his conduct violation Rule 5.4 (except under limited circumstances, a lawyer or law firm shall not share legal fees with a nonlawyer). Public reprimand.

Honesty/Reckless Behavior and Conscious Avoidance of Ethical Obligations

Matter of Kern, 423 S.C. 567, 816 S.E.2d 574 (2018) - SEC is not “another jurisdiction” for purposes of reciprocal discipline. The record, however, demonstrated Lawyer committed misconduct by providing false information in statements to others. The Court added that Lawyer’s “professed ignorance” of his client’s malfeasance (a Ponzi scheme and mail fraud) “does not save him.” Lawyer acted recklessly in making the false statements to others and failed to exercise the required diligence to ensure investors’ money was invested for the purposes represented to them. The Court will not countenance or tolerate a lawyer’s conscious avoidance of ethical duties as an attorney or deliberate avoidance of ethical responsibilities. The Court held Lawyer violated Rules 4.1 (truthfulness in statements to others); Rule 8.4(d) (it is misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); 8.4(e) (it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice). 18-month suspension.

Neglect of Legal matters

Matter of Campbell, 420 S.C. 515, 804 S.E.2d 630 (2017) - Lawyer neglected several legal matters, including an adoption proceeding that was dismissed for failure to prosecute. Lawyer also failed to cooperate with ODC. 3-year suspension.

Matter of Johnson, 420 S.C. 27, 800 S.E.2d 781 (2017) - Magistrate attended a meeting of the Newberry Cotillion Club. At the end of the meeting, the judge and another attendee engaged in a verbal disagreement that escalated into a physical altercation. Both the judge and the other attendee suffered minor injuries. The judge admitted he violated Canons 1, 2, and 4 of Rule 501. 45-day suspension.

Notarizing documents inappropriately

Matter of Schiller, 421 S.C. 404, 808 S.E.2d 378 (2017) – Lawyer failed to withdraw from representation of personal injury client after multiple communications from client that Lawyer cease representation. Lawyer also failed to properly document in writing a contingent fee arrangement, and falsely witnessed and notarized a covenant not to execute. Public reprimand.

Professionalism

Matter of Peeler, Op. No. 27830 (S.C. Sup. Ct. filed Aug. 22, 2018) (Shearouse Adv. Sh. No. 34 at 10) - Probate judge admitted calling court personnel “heifers” and “DW” (double wide). He claimed he was joking when he made the comments. He also admitted to “pranks and jokes” he instigated and participated in during working hours and which were unprofessional and discourteous. The judge admitted by this behavior he violated Canon 1A, Rule 501, CJC (a judge should participate in establishing and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved); Canon 2A (a judge shall avoid impropriety and the appearance of impropriety by acting at all times in a manner that promotes public confidence in the integrity of the judiciary); and Canon 3B(4) (a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity). Judge had resigned so the strongest sanction available was a public reprimand with the condition that the judge not seek judicial office without written permission from the Court and notice to ODC.

Matter of Swan, 422 S.C. 328, 811 S.E.2d 777 (2018) - On several occasions, Lawyer made sexually inappropriate comments to his client on the telephone while she was in jail - he did the same on one occasion with another client. There was no evidence they had sexual relations or engaged in inappropriate touching, or that Lawyer requested sexual services in exchange for anything. Lawyer contended the comments were merely "raunchy banter" or joke between jailed clients and their lawyer, and he did not expect them to become public. The Court stated, "our review of the portions of the telephone conversations at issue revealed [Lawyer's] comments to be sexually explicit and highly offensive in nature. We find such comments made to a client by a member of the legal profession are entirely inappropriate and they will not be tolerated." Lawyer admitted to violating the oath found in Rule 402(h)(2), SCACR. Public reprimand.

Reinstatement

Matter of Dubose, App. Case No. 2018-001448 (2018 WL 4117882) (S.C. Sup. Ct. filed Aug. 9, 2018) - Lawyer received a 15-day suspension under reciprocal discipline (he was also licensed in Virginia and was disciplined there). The Court permitted him to apply for reinstatement without fully complying with Rule 32, RLDE, so long as he provided proof of completing LEAPP Ethics School in September 2018.

Resolution of Fee Disputes Board

Matter of Gorski, ___ S.C. ___, 817 S.E.2d 289 (2018) - Lawyer failed to pay \$2,500 to his client after the Resolution of Fee Disputes Board instructed him to do so. 12-month suspension.

Scope of Representation

Matter of Swan, 422 S.C. 328, 811 S.E.2d 777 (2018) - Lawyer delivered electronic cigarettes to two clients in jail. He deliberately concealed the transfer by positioning his body in order to block the surveillance camera. A second delivery was foiled when an officer saw Lawyer embrace one client, and the officer confiscated the e-cigarettes from the client. Electronic cigarettes were sold at the jails commissary, and, under South Carolina law, are not considered contraband or

a form of tobacco products. The Court stated "as an attorney, [Lawyer] was afforded special privileges by the jail facility and his delivery of the electronic cigarettes to his clients violated the trust the jail had in him as a member of the Bar." Lawyer admitted to violating Rule 1.2(d) (a lawyer shall not assist a client in conduct which is criminal or fraudulent). Public reprimand.

Subpoena/Discovery Abuse cases

Matter of Owen, 422 S.C. 16, 809 S.E.2d 231 (2018) - In March 2011, Lawyer filed a civil action against a company that sold pools. Lawyer issued 17 subpoenas for the production of documents to other customers of the company, certifying that each subpoena that it was issued in compliance with Rule 45, SCRPC, and that notice required by Rule 45(b)(1) had been given to all parties. However, Lawyer failed to provide prior notice to opposing counsel and, in fact, did not provide copies of the subpoenas to opposing counsel until July 2011, after multiple requests from opposing counsel. Lawyer admitted he violated Rule 45 as well as the following portions of the RPC: Rule 3.4(c), RPC (lawyer shall not knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists); Rule 4.1(a), RPC (in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person); Rule 8.4(d), RPC (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); and Rule 8.4(e) (it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice). Lawyer also admitted to violating Rule 7(a)(1), RLDE (misconduct to violate the RPC). Public Reprimand.

Matter of Lundgren, 421 S.C. 300, 806 S.E.2d 125 (2017) – Lawyer lives in Utah, and was licensed to practice in Missouri, California, Utah and Kansas. His wife previously lived in South Carolina with her first husband. In February 2009, the ex-husband sued the wife in South Carolina for defamation. Lawyer submitted an application for *pro hac vice* admission in South Carolina, and his local counsel filed the required motion and paperwork with the circuit court. Lawyer then filed various pleadings, motions, responses to motions, proposed orders, and letters to judges without the signature of his local counsel as required by Rule 404(f), SCACR. The case was later dismissed. In 2011, the wife sought modification of the South Carolina divorce decree. Lawyer again moved before the Supreme Court to be admitted *pro hac vice* but failed to file the application of motion with the family court. The family court issued an order in 2013 resolving the case. In

December 2014, about 18 months after the family court action concluded, Lawyer issued a subpoena under the divorce action's caption to ex-husband's former employer. Thus, he issued the subpoena in a closed case. He also (1) issued the subpoena without stipulation of the parties or a court order upon written application as required by Rule 25, SCRFC; (2) issued the subpoena to an out-of-state entity; (3) falsely stated in the subpoena that an action was pending in family court; (4) falsely certified in the subpoena that it was issued that it was issued in compliance with Rule 45(c) and (d), SCRCP; and (5) failed to set forth in the subpoena the text required by Rules 45(c) and (d), SCRCP. Lawyer then served purported discovery on ex-husband and his lawyer, again under the family court case caption. Lawyer (1) served discovery in a closed case; (2) issued discovery requests in violation of Rule 25, SCRFC; (3) had direct contact with ex-husband, whom he knew was represented; (4) falsely stated in the discovery requests that the family court action was pending; and (5) falsely stated in the discovery that it was issued pursuant to Rules 33, 34 and 36, SCRCP, and Rules 34 and 36 of the Utah Rules of Civil Procedure. This conduct violated Rules 3.4(d), 4.1, 4.2, 4.4(a), and 8.4(e), SCACR. Lawyer also failed to respond to formal disciplinary charges in South Carolina. The Court noted his Missouri license was inactive following discipline there; he resigned from the California Bar, was disbarred in Utah for misappropriation of client funds, and was disbarred in Kansas. Debarred.

Supervision of Nonlawyer Staff

Matter of Yakobi, 422 S.C. 355, 811 S.E.2d 791 (2018) - Lawyer settled a case for a client and, at the client's direction, paid a litigation loan company and a car dealer. His settlement statement did not reflect these payments, and at the time he made the payments he did not confirm the funds were collected funds (Rule 1.15(f)(1)) or "good funds" (Rule 1.15(f)(2)). Lawyer also failed to respond to correspondence or notices from ODC - he claimed his nonlawyer staff had not made him aware of mail or notices ODC sent to him. In another matter, a client hired Lawyer for a domestic relations matter. Over the next two months the client attempted to reach Lawyer by telephone, email, letter and Lawyer's website, but heard nothing. The client fired him and demanded the fee be returned. The client's new lawyer also attempted to contact Lawyer without success. Lawyer stated his paralegal and the paralegal's daughter (who was the receptionist) intentionally deflected attempts at communication by the clients and the new counsel that were intended for Lawyer, including deleting emails sent directly to Lawyer. Lawyer fired those staff members. Upon receiving the Notice of Investigation from ODC, Lawyer hand-delivered a full refund check to new counsel. He agreed he failed to

supervise his non-lawyer staff and failed to make reasonable efforts to ensure the conduct of his non-lawyer staff was compatible with Lawyer's professional obligations. Public reprimand.

Trust Account Reconciliation

Matter of Yakobi, 422 S.C. 355, 811 S.E.2d 791 (2018) - The bank holding lawyer's real estate trust account issued an NSF. ODC's examination of the daily balances revealed multiple negative client subaccount ledgers. Lawyer employed a bookkeeping service to prepare monthly trust account reconciliations; however, reconciliations were not being performed each month. Lawyer admitted he failed to supervise his bookkeeper to ensure monthly reconciliations of his trust account were being performed. He admitted he did not disburse checks related to real estate transactions in a timely manner, on one occasion waiting 6 months. ODC determined the problems were a result of carelessness in accounting for disbursements, not misappropriation. Lawyer admitted he was not reconciling the real estate trust account as required by Rule 1.15, RPC, nor maintaining adequate records as required by Rule 417, SCACR. Public reprimand.

Matter of Cooper, 422 S.C. 350, 811 S.E.2d 788 (2018) - Lawyer represented parties in bankruptcy court and held fees in trust. Lawyer did not maintain a receipt and disbursement journal, client ledgers, or reconciliation reports for her trust account as required by Rule 1, Rule 417, SCACR. She also commingled personal funds with client funds in violation of Rule 1.15, RPC. However, there was no evidence of misappropriation of client funds. She no longer has a trust account. Public reprimand.

Matter of Bell, 421 S.C. 520, 809 S.E.2d 54 (2018) – Lawyer was the victim of an elaborate email scam. He was hired to negotiate the purchase of an oil rig in Oklahoma by an Israeli company called NTB. The fee agreement called for a \$21,000 retainer plus hourly fees. However, NTB advised Lawyer that insurance proceeds due NTB would be wired to his account to be disbursed for expenses related to the rig purchase as instructed. A wire of \$48,000 from Liberty Insurance Company soon arrived in Lawyer's Wells Fargo Bank trust account (prior to the wire the account had \$2.43). NTB's USA director, Roland Nelson, asked Lawyer to give him cash from these funds to pay NTB's expenses. At Nelson's instruction, Lawyer paid two of NTB's third-party vendors. He withdrew \$6,600 cash to purchase cashier's checks made payable to the first vendor. He deposited the cashier's check into an account which Nelson identified as the first vendor. On the

same day, Lawyer withdrew \$8,000 in cash from the Wells Fargo trust account – he gave Nelson \$500 for a hotel bill, and deposited \$7,500 into a trust account at Bank of America (BOA), then transferred those funds to the second vendor's account. Lawyer then paid himself \$8,500 in fees by on-line transfers from the Wells Fargo account to his operating account and a personal account. During an angry phone call, Nelson claimed one or both of NTB's third-party vendors had not been paid, and threatened to cut Lawyer's throat. Lawyer terminated the relationship with NTB, and withdrew the balance from Wells Fargo (forgetting the \$8,500 transfer to his own accounts). Lawyer signed a cash withdrawal slip for \$33,987.43 to purchase a cashier's check made payable to his firm and deposited the check into his BOA trust account. This caused his Wells Fargo account to be overdrawn \$8,485. Although NTB is a legitimate company, the oil rig purchase was a fraudulent transaction. The wire from Liberty into the Wells Fargo account was initiated by an email scam perpetrated on NTB. When Wells Fargo contacted Lawyer about the overdraft and fraudulent wire, Lawyer returned the \$33,987.43 to his Wells Fargo account and authorized the return of the balance (\$35,467.43) to Liberty. He retained the \$8,500 fee, claiming he did not understand from his conversation with Wells Fargo that the funds belonged to Liberty. He admits he failed to ask enough questions to learn what actually happened. Lawyer admitted he violated Rule 2(c), Rule 417, SCACR (cash withdrawals from client trust accounts are prohibited) and Rule 6, Rule 417 (no item shall be drawn on a trust account made payable to cash). 9 month suspension.

Matter of Johnson, 421 S.C. 524, 809 S.E.2d 56 (2017) – Lawyer used client funds for personal use, failed to maintain a receipt and client disbursement journal or client ledgers in violation of Rule 417. After his interim suspension, Lawyer refused to return \$900 flat fees he received from the SC Commission on Indigent Defense in 24 separate cases that had to be reassigned. He admitted he violated Rule 1.4 (communication), 1.15(a) (client property), 8.1 (false statement of material fact to disciplinary counsel), and the trust account rule, 417. Disbarred.

Matter of Jordan, 421 S.C. 594, 809 S.E.2d 409 (2017) - Lawyer violated rules governing business transactions adverse to a client, rules governing the holding of other people's property, rules governing disbursement of trust account funds, and rules governing conduct involving honesty, fraud, deceit and misrepresentation. He violated Rule 1.5(e) by not keeping referring attorneys updated on the progress of the cases, but, in fact, concealing the progress to avoid paying fee splits. He accepted a loan from a client without complying with Rule 1.8(a)(1). Lawyer also failed to hold money belonging to others separate from his own funds, in violation of Rule 1.15(a). Disbarred.

Willful disobedience of a court rule or order

Matter of Cooper, 422 S.C. 350, 811 S.E.2d 788 (2018) - Lawyer withdrew \$70,000 in retainer fees for three Chapter 11 bankruptcy cases post-petition without seeking or receiving bankruptcy court approval in violation of local rules and Rule 3.4(c), RPC (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal). The court ordered her to disgorge the fees and permitted repayment on a schedule. The trustee later sought to have her sanctioned and held in contempt for failing to comply. The court issued a new order relieving her making payments for 18 months in exchange for her agreement not to file any new bankruptcy cases during that time. Public reprimand.